

**Office of Chief Counsel  
Internal Revenue Service**

**memorandum**

CC:LM:MCT:CIN:1:TL-N-1264-01  
LRAverbeck

date:

to: William Mason, Team Manager LM:CTM:1363

from: Associate Area Counsel (LMSB), Cincinnati

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subject: [REDACTED]  
Restricted Consent

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**ISSUE**

Whether the language proposed for Form 872 extending the Statute of Limitations on assessment and collection under I.R.C. § 6501(c)(4) is adequate to restrict the extension to the four enumerated issues.

**CONCLUSION**

The proposed language is adequate to restrict the issues covered by the Form 872 extension agreement, but we suggest

additional language to ensure that both parties are equally subject to the restrictions.

### FACTS

The taxpayer's tax returns for the years ending [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are currently under examination. Although most of the contested issues have been settled, there are still four issues which remain unagreed. The taxpayer has signed unrestricted consents to extend the statute of limitations on assessments until [REDACTED]. However, the taxpayer will not sign another unrestricted consent. Therefore, it will be necessary to secure a restricted consent from the taxpayer prior to [REDACTED].

### DISCUSSION

There is some uncertainty as to the extent of the restrictions covered by the language on the Forms 872. The standard Form 872 provides the taxpayer a related six month extension from the expiration of the agreement in which to file a refund claim, as specified in I.R.C. § 6511(c)(1). Where the agreement itself is restricted to particular issues, it would seem unnecessary to specifically restrict a refund claim to those issues also. In a 1992 decision, the 7<sup>th</sup> Circuit Court of Appeals noted that as the Code allows extensions by agreement for any tax imposed under Title 26, the parties are free to limit the terms of the agreement to a specific tax. In that case, Indiana Nat'l Corp. v. United States, 980 F.2d 1098 (1992), the agreement was expressly limited to the assessment of a specific type of tax, namely income tax. A refund claim was not expressly limited in the agreement, yet the court held that the taxpayer could not file a refund claim for excise tax where, but for the extension agreement, the statute of limitations had expired. Indiana Nat'l Corp. v. United States, 980 F.2d 1098 (1992).

However, the Service still follows a more liberal interpretation of section 6511(c), as applied by the U.S. District Court for the Northern District of Alabama in Liberty Nat'l Life Ins. Co. v. United States, 77-1 U.S.T.C. ¶ 9107 (ND Ala. 1976), rev'd on other grounds, 600 F.2d 1106 (5<sup>th</sup> Cir. 1979), cert. denied, 444 U.S. 1072 (1980). Namely, that even though a consent to assess tax is restricted to a particular issue, the taxpayer's right under section 6511(c) to claim a credit or refund based upon such consent is not automatically so restricted. Thus, although the language you propose would restrict the extension to the four issues listed with no

distinction as to assessments or refund claims, we think it would be in the best interest of the Service to use even more specific language in the agreement so that refund claims are clearly limited in the same manner as assessments.

To achieve such a similar restriction on credits and refunds, we believe you should consider adding an additional restricted paragraph to the consent. The following paragraph, inserted after the four restricted issues, would limit the taxpayer's right to file a claim for credit or refund:

The provisions of section 6511(c), as set forth in paragraph (2), above, are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement.

In addition, you may want to use the following language on the restricted consent form:

The Statute of Limitations extended by this agreement is limited to additional deficiency assessments or claims for credit or refund, including any related adjustments to tax liability arising from changes in the tax treatment of, the following issues only:

1. Amortization related to the [REDACTED] of the [REDACTED] gas distribution system capitalized during tax year [REDACTED].
2. Expenditures incurred during tax year [REDACTED] for the removal of low pressure buckets and retaining rings on the Unit #1 turbine/generator.
3. Expenditures incurred during tax year [REDACTED] for the removal of the low pressure buckets and retaining rings on the Unit #1 turbine/generator as it relates to potential depreciation allowances for tax years [REDACTED] and [REDACTED].
4. Costs associated in tax years [REDACTED], [REDACTED] and [REDACTED] with the acquisition, transportation, and storage of natural gas including the method of accounting or inventorying for such costs as commonly referred to as: Commodity Charges, Demand Charges, Capacity Charges, Injection Charges, Withdrawal Charges, Reservation Charges, Deliverability Charges, Storage Charges, Transportation Charges, or other charges similar in nature or description.

If you have any further questions, please contact Attorney Linda Averbeck at (513) 684-3211.

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By: \_\_\_\_\_  
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